IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1996 OF 2005
IN
SUIT NO. 227 OF 1984

Mrs. Escloses Francis Rodrigues & Ors. ...Plaintiffs.
V/s.
Smt. Hansa K. Dedhia & Ors. ... Defendants.

Mr. M.F. Rodrigues Plaintiff No.4 present in person.
Mr. Vinit Jagtap for Defendants 5 and 6.

.....

CORAM : S.C. DHARMADHIKARI,J.
30TH SEPTEMBER 2008.

P.C. :

. Consequent upon the order passed by the learned Single Judge Mrs. Dalvi, J. on Notice of Motion No.3025 of 2008, Notice of Motion No.1996 of 2005 stands restored to the file of the suit.

2. Notice of Motion No.1996 of 2005 is for restoration of Suit No.227 of 1984 which was dismissed in default on 13th June 2005.

3. The Plaintiff No.4 appears in person. He states that during the pendency of the suit, Plaintiff Nos.1 to 3 are expired. He could not monitor the progress of the suit nor give instructions to his Advocate because of the ailment of Plaintiff Nos. 1 to 3. It has been noted by this Court in the order passed on 15th September 2008 that Plaintiff Nos. 1 to 3 are the father, mother and brother of Plaintiff No.4. The reasons assigned for restoration are disputed by the Advocate appearing for the Defendants

and he contends that the restoration cannot be done after a period of three years. The suit has been dismissed in the year 2005 and the Plaintiffs were aware of the dismissal but took no steps to have the suit restored to file. It is urged that the Plaintiffs are not diligent in prosecuting the suit and therefore, the suit should not be restored.

4. Having perused the Notice of Motion and the affidavit in support so also the orders passed by this Court on 15th September 2008, I am of the opinion that the Plaintiff No.4 who appears in person deserves one opportunity to have the claim adjudicated on merits provided he abides by certain terms as to payment of cost and diligent prosecution of the suit.

5. Accordingly, Notice of Motion No.1996 of 2005 is made absolute in terms of prayer clause (a), subject however to the Plaintiff paying cost quantified at Rs.5,000/- (Rupees Five Thousand) to Defendant Nos. 5 and 6 within a period of two weeks from today. If cost is paid and proof produced, the Suit shall stand restored to file. If there is no compliance to this direction, the order of dismissing the Suit in default stands confirmed and thereafter, no application for restoration shall be entertained.

(S.C. DHARMADHIKARI,J.)